LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 20 1972
E. ROBERT SEAVER, CLERK

No. 71-81

In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA, PETITIONER

v.

LOARN ANTHONY BISWELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
HENRY E. PETERSEN,
Assistant Attorney General,
JEROME M. FEIT,
Assistant to the Solicitor General,
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	4
Summary of argument	6
Argument:	
I. The authority granted by Congress to Internal Revenue agents to make warrantless inspections of the business premises of licensed firearms dealers in order to examine records which are required by statute to be kept, as well as firearms kept or stored at the licensed premises, does not violate the Fourth Amendment	8
II. The inspection and seizure in this case were reasonable	19
Conclusion	21

CITATIONS

Cases:

Bumper v. *North Carolina*, 391 U.S. 543 — 20

Camara v. *Municipal Court*, 387 U.S. 523 — 7, 12, 13, 15, 16, 17, 18

Carroll v. *United States*, 267 U.S. 132 — 16

Colonnade Catering Corp. v. *United States*, 397 U.S. 72 — 6, 8, 9, 10, 18, 19

Coolidge v. *New Hampshire*, 403 U.S. 443 — 14

Davis v. *United States*, 328 U.S. 582 — 14

Katz v. *United States*, 389 U.S. 347 — 14

454-866—72——1

Cases—Continued

	Page
Mancusi v. *DeForte*, 392 U.S. 364	14
See v. *City of Seattle*, 387 U.S. 541	7
Terry v. *Ohio*, 392 U.S. 1	10, 12, 13, 15, 16, 17, 18
United States v. *Alfred M. Lewis, Inc.*, 431 F. 2d 303, certiorari denied, 400 U.S. 878	19
United States v. *Freed*, 401 U.S. 601	5
United States v. *Gross*, 313 F. Supp. 1330, affirmed November 2, 1971, No. 71-1063, C.A. 7	10
United States v. *Hofbrauhaus of Hartford, Inc.*, 313 F. Supp. 544	19
United States v. *Thriftimart, Inc.*, 429 F. 2d 1006, certiorari denied, 400 U.S. 926	19
United States v. *Wilson*, 440 F. 2d 1068	10
Warden v. *Hayden*, 387 U.S. 294	16
Zap v. *United States*, 328 U.S. 624, reversed, 330 U.S. 800	14
Constitution, statutes and regulations:	
Constitution of the United States, Fourth Amendment	6, 9
Gun Control Act of 1968 (18 U.S.C.):	
Title I and Title II	14
Section 921(a)(11)	4
Section 921(a)(12)	4
Section 921(a)(19)	4
Section 923	4
Section 923(a)(3)	2
Section 923(e)	9, 21
Section 923(f)	9, 21
Section 923(g)	2, 3, 5, 15
Section 924(a)	9
National Firearms Act, as amended (26 U.S.C.):	
Section 5801	4
Section 5841	5
Section 5845(k)	4
Section 5861(d)	5

Constitution, statutes and regulations—Continued

	Page
7 U.S.C.:	
Section 79	10
Section 243	10
Section 244	10
Section 396	10
Section 511	10
Section 581	10
Section 585	10
12 U.S.C.:	
Section 26	11
Section 483	11
15 U.S.C. 1270(b)	10
18 U.S.C., Section 843(f)	11
21 U.S.C.:	
Section 157	10
Section 374(a)	10
Section 455	10
Section 621	10
Section 1034	10
26 U.S.C.:	
Section 5275	11
Section 7342	9
29 U.S.C. 657(a)	11
30 U.S.C.:	
Section 723	11
Section 724	11
Section 813(b)	11
42 U.S.C.:	
Section 262(c)	10
Section 263i(a)	10
49 U.S.C. 1377(e)	11
26 C.F.R.:	
Section 178, Subpart H	5
Section 178.23	3, 5, 14
Section 178.121(b)	4, 5, 14

Miscellaneous:

Congressional Findings and Declaration in Notes preceding 18 U.S.C. 922 ..... Page 10, 11

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-81

UNITED STATES OF AMERICA, PETITIONER

v.

LOARN ANTHONY BISWELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 442 F.2d 1189.

JURISDICTION

The judgment of the court of appeals (Pet. App. B) was entered on May 18, 1971. On June 9, 1971, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and including July 17, 1971 (A. 63). The petition was filed on July 15, 1971, and was granted on December 7, 1971 (A. 64). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the inspection provisions of the Gun Control Act of 1968 (18 U.S.C. 923(g)) violate the Fourth Amendment insofar as they authorize Internal Revenue Service agents to inspect without a warrant during business hours firearms and required records on the premises of a licensed dealer in firearms.

2. Whether the inspection and seizure in this case were reasonable.

STATUTE AND REGULATIONS INVOLVED

18 U.S.C. 923 (Gun Control Act of 1968) provides in pertinent part:

> (a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:
>
> * * * * *
>
> (3) If the applicant is a dealer—
>
> (A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year;
>
> (B) who is a pawnbroker dealing in firearms other than destructive devices, or ammunition for firearms other than destructive devices, a fee of $25 per year; or
>
> (C) who is not a dealer in destructive devices or a pawnbroker, a fee of $10 per year.
>
> * * * * *

(g) Each licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for the inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. * * *

26 C.F.R. 178.23 provides:

Any internal revenue officer may enter during business hours the premises, including places of storage, of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of inspecting or examining any records or documents required to be kept by such importer, manufacturer, dealer, or collector under this part, and any firearms or ammunition kept or stored by such importer,

manufacturer, dealer, or collector at such premises.

26 C.F.R. 178.121(b) provides:

> Internal revenue officers may enter the premises of any licensed importer, licensed manufacturer, licensed dealer, or licensed collector for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 178.23). Section 923(g) of the Act requires licensed importers, licensed manufacturers, licensed dealers, and licensed collectors to make such records available for such examination or inspection at all reasonable times.

STATEMENT

After a trial by jury in the United States District Court for the District of New Mexico, respondent was convicted of having engaged in business as a dealer in firearms, as defined in 26 U.S.C. 5845(k), without having paid the special occupational tax required by 26 U.S.C. 5801. He was sentenced to imprisonment for a period of two years (A. 2).

Respondent operated a pawnshop in Hobbs, New Mexico, and had a federal license to deal in certain kinds of firearms and ammunition;[1] he was not licensed to deal in sawed-off rifles (A. 8–10, 24, 29, 31, 47, 57). Shortly after 3:00 p.m. on February 4, 1970, special investigator Hupp of the Alcohol,

[1] He was licensed under 18 U.S.C. 923. The term "dealer" is defined in 18 U.S.C. 921(a)(11) as including a "pawnbroker." The term "pawnbroker" is defined in 18 U.S.C. 921(a)(12). It is unquestioned that respondent fell within this definition.

Tobacco and Firearms Division of the Treasury Department, accompanied by a local police officer, made a routine inspection visit to respondent's pawnshop. After inspecting respondent's records, which were not in proper form, Hupp asked to see the firearms (A. 8, 20, 28).[2]

When respondent asked whether he had a search warrant, Hupp replied that licensed premises were required to be open to inspection during normal business hours (see note 2, *supra*). At respondent's request, Hupp showed him a copy of the statute (18 U.S.C. 923(g)) which so provides. Respondent, a former policeman, read it and said, "If that is the law, I guess it is all right" (A. 8–9, 28, 35).

Hupp thereupon entered the storage room and found two fully operable sawed-off rifles, which had been pawned to respondent (A. 10, 13, 17, 22–24). Since respondent was not licensed to deal in such weapons and they were subject to the National Firearms Act,[3] the two rifles were seized. The next day a

[2] As a registered dealer, respondent was required by statute to maintain records of receipt and disposition of all firearms (18 U.S.C. 923(g); 26 C.F.R. 178, Subpart H), and to make such records available for inspection by internal revenue officers at all reasonable times (18 U.S.C. 923(g); 26 C.F.R. 178.121(b)). Furthermore, the statute (18 U.S.C. 923 (g)) and regulations (26 C.F.R. 178.23, 178.121(b)) provide that any internal revenue officer may enter the licensed business premises during business hours to inspect records, firearms and ammunition.

[3] The sawed-off rifles were not registered to respondent in the National Firearms Registration and Transfer Record as required by 26 U.S.C. 5841 (A. 36, 39, 40–41); it was therefore unlawful for respondent to receive or possess them, 26 U.S.C. 5861(d). See *United States* v. *Freed*, 401 U.S. 601, 604.

search warrant was obtained under which numerous other weapons seen in the storage room were seized (A. 10–11).

The district court, overruling respondent's pre-trial motion to suppress and his objections at trial, held the seized guns to be admissible in evidence (A. 12). The court of appeals reversed, holding that respondent had not consented to the agent's entry and that 18 U.S.C. 923(g) violated the Fourth Amendment, insofar as it authorized warrantless entry and inspection. The court concluded that since the weapons were improperly seized, their introduction at trial was reversible error (Pet. App. A).

SUMMARY OF ARGUMENT

This case presents the question whether Congress may, consonant with the requirements of the Fourth Amendment, adopt a warrantless inspection procedure directed at the firearms and required business records of a licensed gun dealer. We contend that Congress has that authority where, as here, it enacts an inspection statute narrowly limited in time, location and scope. We urge that the validity of this limited inspection scheme—which is essential to the effective control and regulation of the gun distribution business—should be sustained under the rationale of *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, since there was no forcible entry in this case. The use of forcible entry, rather than the statutorily prescribed remedy of criminal sanctions, to enforce the warrantless inspection in *Colonnade* was the sole, and

narrow, basis for the holding against the government in that case. Here, by contrast, respondent simply yielded to the authority of the statute as soon as he was made aware of its terms, just as an individual might permit a search under a valid warrant when it is served on him.

The decisions in *Camara* v. *Municipal Court*, 387 U.S. 523, and *See* v. *City of Seattle*, 387 U.S. 541, do not require invalidation of the present statute. The considerations which compelled the adoption of the warrant procedure in *Camara* and *See* are not present here. The inspection authority under the instant statute is precise and narrow and limited to business hours; it is directed at a highly regulated industry where inspection of the dealer's books and firearms is an essential element of effective regulation; and it is aimed at businessmen who know that inspection is a normal attribute of this business. In the context of the statutory purposes and statutory safeguards involved here, Congress was justified in concluding that the public interest in prompt warrantless inspection of gun dealers' premises outweighs the minimal intrusion into privacy authorized in this inspection scheme.

The remaining question is whether the inspection in this case was reasonable. It is our position that the agent acted within the scope of his authority and there was no unconstitutional compulsion. In allowing inspection, respondent simply complied with his statutory duty when it was pointed out to him.

ARGUMENT

I. THE AUTHORITY GRANTED BY CONGRESS TO INTERNAL REVENUE AGENTS TO MAKE WARRANTLESS INSPECTIONS OF THE BUSINESS PREMISES OF LICENSED FIREARMS DEALERS IN ORDER TO EXAMINE RECORDS WHICH ARE REQUIRED BY STATUTE TO BE KEPT, AS WELL AS FIREARMS KEPT OR STORED AT THE LICENSED PREMISES, DOES NOT VIOLATE THE FOURTH AMENDMENT

Just two Terms ago, this Court in *Colonnade Catering Corp.* v. *United States,* 397 U.S. 72, had before it the question of the validity of a warrantless inspection scheme dealing with business premises licensed to sell intoxicating liquor. In light of the long-standing regulation of the liquor industry, the Court was of the view that "Congress has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand", and that this could involve a non-warrant procedure. *Colonnade Catering Corp.* v. *United States, supra,* 397 U.S. at 76. The Court's decision against the government in *Colonnade* was based on a narrow issue of statutory construction (397 U.S. at 74, 77). Under the statutory scheme there involved, the Court found that Congress had not authorized *forcible* entries without a warrant to accomplish inspection. "Congress * * * resolved the issue", the Court concluded, "not by authorizing forcible, warrantless entries, but by making it an offense for a licensee to refuse admission to the inspector" (397 U.S. at 77).

The basic issue in this case is whether the warrantless inspection authority recognized as valid in *Colon-*

nade with regard to the liquor industry is similarly constitutional in the comprehensive regulatory and licensing scheme Congress has applied to dealers in firearms. We urge that it is, and that under the rationale of *Colonnade* the search and seizure in the present case were valid, since no force was employed to gain entry. While it is true that respondent yielded to the authority of the statute when its terms were made known to him, this did not amount to compulsion or coercion violative of the Fourth Amendment. If, as we submit, the present inspection scheme is justified in this highly regulated industry, then the licensee here, as in *Colonnade,* had a duty to permit the inspection and comply with a lawful show of authority.[4]

In this portion of the brief we will argue that the limited, warrantless inspection scheme involved here is necessary for effective regulation of the licensed gun industry and that no countervailing Fourth Amendment interest would be served by imposing a warrant requirement. In Point II we contend that the particular inspection in this case was consonant with Fourth Amendment requirements.

---

[4] While the instant statute does not contain an equivalent of the provision of the liquor laws (26 U.S.C. 7342) specifically prescribing a fine for refusal to permit entry and inspection (see *Colonnade*, *supra*, 397 U.S. at 74), Congress has made it a crime to violate any provision of the statute (18 U.S.C. 924(a)). Moreover, a license may be revoked where the licensee violates any provision of the statute or any rule or regulation thereunder (18 U.S.C. 923(e) and (f)).

A. Neither respondent nor the court below has questioned the power of Congress to require that gun dealers obtain a federal license. Indeed, whenever this question has been raised, the power of Congress to require all firearms dealers to obtain a federal license has been sustained. *United States* v. *Wilson,* 440 F.2d 1068 (C.A. 6); *United States* v. *Gross,* 313 F. Supp. 1330 (S.D. Ind.), affirmed November 2, 1971, No. 71-1063, C.A. 7. While regulation of guns does not have the same historic antecedents as the regulation of the liquor industry involved in *Colonnade,* the importance of gun control at the present time in the Nation's history is apparent. See, *e.g.,* Congressional Findings and Declaration in the Notes preceding 18 U.S.C. 922; cf. *Terry* v. *Ohio,* 392 U.S. 1, 24, n. 21.

An essential attribute of effective gun control and licensing is that the licensing authority be authorized, as it is in the statute here, to inspect premises used in the licensed enterprise in order to ensure that the conditions of the license are honored.[5] Inspection serves

[5] Innumerable licensing and regulatory statutes provide for inspection. For example, the Secretary of Agriculture has the right to enter private premises for inspection of meat (21 U.S.C. 621); fruit (7 U.S.C. 581, 585); poultry (21 U.S.C. 455); tobacco (7 U.S.C. 511); livestock (7 U.S.C. 396); grain (7 U.S.C. 79); eggs and egg products (21 U.S.C. 1034); food warehouses (7 U.S.C. 243, 244); and places where antitoxin is manufactured (21 U.S.C. 157). The Secretary of Health, Education, and Welfare may enter and inspect (or take samples from) establishments where electronic products are manufactured or held (42 U.S.C. 263i(a)); premises where serums and vaccines are prepared (42 U.S.C. 262(c)); establishments where food, drugs or cosmetics are manufactured or held (21 U.S.C. 374(a)); and establishments where hazardous substances are manufactured (15 U.S.C. 1270(b)). Persons using denatured

the basic statutory purpose of assuring that the weapons are dispersed in a regulated, traceable manner, rather than in an indiscriminate fashion which might lead to their undetectable possession by the criminal element. This assurance of full and accurate compliance is crucial to the congressionally intended use of the regulatory scheme as an aid to law enforcement officials.[6] The regulatory system, for example, often makes it possible to trace a firearm involved in a particular crime.[7] Again, in riot situations it can be useful for law enforcement authorities to know the source of guns for the particular

---

distilled spirits are required to keep certain records and to submit to inspection during business hours by Internal Revenue officers, who are entitled to withdraw samples of such spirits (26 U.S.C. 5275). A provision virtually identical to that in the instant case applies to persons licensed to deal in explosive materials (18 U.S.C. 843(f)). Member banks of the Federal Reserve System are subject to inspection by the Secretary of the Treasury (12 U.S.C. 483) and by the Comptroller of the Currency before commencing business (12 U.S.C. 26). The Secretary of Labor and his delegates are empowered to enter places of employment to investigate safety and health conditions (29 U.S.C. 657(a)). The Secretary of the Interior has similar rights as to coal mines (30 U.S.C. 813(b)) and other mines (30 U.S.C. 723, 724). The Civil Aeronautics Board has a right of access at all times to all lands, buildings and equipment of any air carrier (49 U.S.C. 1377(e)).

[6] At the outset of its findings and declaration supporting the adoption of the regulatory scheme, Congress stated that "the purpose of this title * * * is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, * * *." See Congressional Findings and Declaration in the Notes preceding 18 U.S.C. 922.

[7] Thus the firearms used in the recent killing of a California judge and other persons were traced to their purchaser through records required to be maintained by licensees.

area and the customers of the gun dealers. Inspection fulfills this purpose. In short, the statutory scheme involved here—with its provision for inspection which is narrowly circumscribed in time, location and the objects subject to inspection—is designed to keep a legitimate watch on the movement in firearms and in that way to inhibit and curtail their illegal use. Our submission is that the requirement of search warrants in such a regulatory system would impede its effectiveness without any concomitant benefits that normally flow from the warrant procedure—and hence, that the use of warrants is not constitutionally required under the reasonableness standard of the Fourth Amendment, in this situation.

B. To substantiate these points, we turn first to the decisions in *Camara* v. *Municipal Court,* 387 U.S. 523, and *See* v. *City of Seattle,* 387 U.S. 541, which involved municipal housing and fire code inspections and imposed search warrant requirements in those situations. The Court's opinions in those cases indicated that three basic considerations are critical in determining whether warrants are constitutionally required in the code-inspection context—*viz.*, the demands of privacy, the public need for warrantless searches, and the standards to be employed in issuing warrants. Here, we submit, these considerations support the validity of the warrantless gun inspection procedures which Congress has authorized.

Of critical concern to the Court in *Camara* and *See* was the danger that the broad inspection authority exercised in those cases gave too much discretion to

the officers in the field and too little protection to individuals who might have only a minimal awareness of their rights. As stated by the majority in *Camara* (387 U.S. at 532–533):

> * * * Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. * * * The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. * * *

A similar concern was expressed in *See, supra,* 387 U.S. at 543.

An entirely different situation is presented here. In contrast to the typical homeowner or typical businessman, the gun dealer is engaged in a business which is subject to pervasive regulation. Nor is he required to apprise himself of a broad range of regulations only tangentially related to his business; he is required only to know the restrictions and conditions which have been placed specifically on the possession and sale of guns. As a dealer, he has voluntarily sought and obtained a license. When a revenue agent, making a routine inspection, presents his identifica-

tion at the business premises during business hours, and expressly requests access to an area made available to him by statute to inspect the dealer's firearms, the dealer is hardly in a position to claim that he is unaware of the nature and scope of the inspector's authority. Nor is he required to rely upon the revenue agent's statement of his authority and its scope since he is periodically advised of the inspection authority by the Internal Revenue Service.[8]

It is thus apparent that a gun dealer can have no reasonable expectation of freedom from government inspection without warrant of his firearms. Compare *Mancusi* v. *DeForte*, 392 U.S. 364, 369; *Katz* v. *United States*, 389 U.S. 347, 351.[9] Correspondingly, there is only minimal danger that the Internal Revenue inspector will misapply his specific and limited authority and instead conduct a general, exploratory search. Cf. *Coolidge* v. *New Hampshire*, 403 U.S. 443,

[8] The Secretary is required to furnish each licensee with an annually revised compilation of public ordinances (18 U.S.C. 921(a)(19)). This document contains both Title I and Title II of the Gun Control Act of 1968 and dealers therefore are apprised of the right of entry and inspection during business hours. The applicable regulations (26 C.F.R. 178.23 and 178.121(b)) also spell out the "Right of Entry and Examination."

[9] An alternative articulation is that by engaging in this highly regulated business with full knowledge that the business records, ammunition and firearms may be subject to periodic inspection, the licensee is in substantially the same position as if he had specifically agreed to these inspections as a condition for doing business. Cf. *Zap* v. *United States*, 328 U.S. 624, 628, reversed on other grounds, 330 U.S. 800; see also *Davis* v. *United States*, 328 U.S. 582.

467. His narrow authorization (to inspect guns and required business records on the premises of a gun dealer during business hours), coupled with the dealer's knowledge of this limited authority, does not have the potential for abuse which might require the intervention of a magistrate before the fact.

Indeed, the magistrate asked to issue a warrant authorizing inspection of a gun dealer's premises could do no more than is presently done by statute. In the vast majority of cases, he could be presented with no information on which to base a more reasoned judgment than that exercised by the agents themselves, and he would reasonably limit the scope of the inspection to those locations and times already specified in 18 U.S.C. 923(g). In this statutory context, therefore, Congress was justified in concluding that the competing ends of privacy of the individual dealer and effective protection of the public will best be served by testing the validity of any particular inspection after the fact rather than requiring the prior approval of a magistrate.

The second pertinent area of inquiry specified in *Camara* and *See*—"whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search" (*Camara, supra*, 387 U.S. at 533)—also supports the reasonableness of the present statutory scheme. Congress was dealing here with easily movable objects, ammunition and guns, which can be readily secreted or moved while a warrant is being sought. Thus, if warrants were required to be

sought only after entry is refused as suggested in *Camara, supra,* 387 U.S. at 539, the essential governmental purpose would be in real danger of frustration. The dealer who is skirting the law would almost surely utilize the time thereby afforded to conceal any infractions. This is of particular concern in regulation of the firearms business where unauthorized concealment and uncontrolled movement of weapons can seriously endanger the public.[10]

If, on the other hand, warrants were required to be obtained here in advance of inspection because "surprise" is "a crucial aspect" (*See, supra,* 387 U.S. at 545 n. 6), there would, in effect, be an automatic warrant requirement even though most licensees would have no objection to inspection. The result would be needless consumption of limited manpower,[11] with a tendency to antagonize the law abiding dealers. We submit, therefore, that in light of the minimal additional safeguard of any right of privacy that warrants

[10] The special nature of this business thus suggests an analogy to other situations where the circumstances permit enforcement officers to act without a warrant, such as the search of a movable vehicle, *Carroll* v. *United States,* 267 U.S. 132, 153, or the search for a fleeing suspect during hot pursuit, *Warden* v. *Hayden,* 387 U.S. 294, 298–300.

[11] We are informed by the Internal Revenue Service that there are approximately 144,000 licensees presently registered under the Act, who are subject to inspection by fewer than 1,600 agents of the Alcohol, Tobacco and Firearms Division. These manpower limitations are compounded by the circumstance that many of the licensees are located in rural areas. In the present case, for example, it would have been necessary to go to Carlsbad, New Mexico, at the far end of the next county, in order to locate a magistrate (A. 36–37).

would provide, the substantial disadvantages of using a warrant procedure in this field justify Congress' authorization of limited inspection of the premises of gun dealers without warrants.

The third consideration discussed in *Camara* and *See* was the standards to be employed in determining whether to issue warrants. In those cases, the reasonableness of searches was dependent principally on the passage of time since the last previous inspection and the physical conditions of the general area. (see *Camara, supra,* 387 U.S. at 535–538). These considerations have only limited relevance to the situation here. The physical conditions in the general area are unrelated to the need to inspect the premises of a dealer in guns; nor is the passage of time of crucial significance here.[12] Among other factors, manpower availability, the peculiar conditions of local regions (such as geographic dispersion of dealers), the number of violations previously discovered, or a wave of criminal activity may be involved in the decision whether to inspect a particular dealer. Flexibility of approach is peculiarly appropriate to serve the objectives of the inspection provision of the statute—that is, to determine whether the gun dealer is complying with his obligations under his license. This need for flexibility suggests that a

[12] While this is but a single factor prompting inspection, we are advised by the Internal Revenue Service that an effort is made to inspect a dealer's business premises at least on a yearly basis near the time when the annual license is due to expire (see A. 26). However, as to pawnbrokers, an effort is made to inspect with greater frequency.

magistrate's role in authorizing these inspections would not be a meaningful one.[13]

C. In short, in the present case, as in *Colonnade*, the reasons underlying the warrant requirement announced in *Camara* and *See* are absent. On the contrary, the public importance of the industry being regulated, the voluntary entry of the dealer into that industry with knowledge that close inspection will be required, and the precise and narrowly circumscribed inspection authority granted by Congress all militate against a warrant requirement. What was said in *Colonnade* has even greater force in this case (397 U.S. at 76–77):

> We agree that Congress has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand. The general rule laid down in *See* v. *City of Seattle, supra,* at 545—"that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure"—is therefore not applicable here. In *See,* we reserved decision on the problems of "licensing programs" requiring inspection, saying they

[13] As noted in the Statement (*supra*, pp. 5–6), once the inspector had probable cause to believe that respondent was guilty of a crime, he obtained a search warrant before returning to respondent's business premises to seize other weapons. It was at this point, unlike the situation before the initial, routine inspection, that the magistrate could exercise his independent judgment concerning whether there was probable cause to believe a crime had been committed.

> can be resolved "on a case-by-case basis under the general Fourth Amendment standard of reasonableness." *Id.*, at 546.
>
> * * * * *
>
> * * * We deal here with the liquor industry long subject to close supervision and inspection. As respects that industry * * *, Congress has broad authority to fashion standards of reasonableness for searches and seizures. * * *

Here, too, Congress should have "broad authority to fashion standards of reasonableness" for supervision and inspection of the business of distributing guns. It has adopted an eminently reasonable scheme, one that is particularized and narrow with a minimal danger that rights of privacy will be invaded and which serves a paramount public interest. See *United States* v. *Thriftimart, Inc.*, 429 F. 2d 1006 (C.A. 9), certiorari denied, 400 U.S. 926; *United States* v. *Hofbrauhaus of Hartford, Inc.*, 313 F. Supp. 544 (D. Conn.); *United States* v. *Alfred M. Lewis, Inc.*, 431 F. 2d 303 (C.A. 9), certiorari denied, 400 U.S. 878. Accordingly, the rationale of *Colonnade*, far from supporting the decision below, stands as firm authority for the validity of the inspection statute at issue in this case.

II. THE INSPECTION AND SEIZURE IN THIS CASE WERE REASONABLE

If, as we have argued, the statute validly imposes a duty on gun dealers to permit inspection of firearms during business hours, there can be little doubt of the validity of the inspection and seizure in the instant case. Accompanied by a local officer, the inter-

nal revenue agent arrived in mid-afternoon, showed his credentials and explained his purpose; when respondent showed reluctance to permit inspection of the firearms in the storeroom, the officer allowed respondent, an ex-policeman, to read the statutory provision authorizing inspection. After respondent read the statute, he complied with his statutory duty and permitted the officers to enter his storage room and inspect the firearms. The court below held this inspection invalid on the theory that in these circumstances respondent's "consent" was "ineffective" under the rationale of *Bumper* v. *North Carolina*, 391 U.S. 543.

Bumper seems obviously inapplicable. There the officer said he had a warrant when he did not have a warrant, and the "consent" was obtained by that misrepresentation. Here there was no misrepresentation. The officer said that the law authorized a search of business premises, and showed the owner the law. There was no deception, and no coercion except that coming from the law itself. Moreover, the standards of *Bumper*, which involved a search without warrant of a private dwelling by officers seeking evidence of crime, are not addressed to, and do not govern, the present situation. We are not here dealing with a case where one has a choice either to permit or not permit a search and a warrant is required in the absence of consent. Here respondent had no unfettered choice. Having entered the gun business where inspection is authorized by statute, and is necessary for proper enforcement of the licensee's obligations, respondent

had the duty to permit inspection. Had he refused he was subject to revocation of his license. See 18 U.S.C. 923(e) and (f). It was entirely proper for the officers to point to the statute to inform the licensee of his obligation to permit inspection; correspondingly, that respondent acquiesced when his statutory obligation was made known to him was no more than compliance with his duty as a licensed dealer in firearms—fully comparable to compliance with one's duty to permit a search under a valid warrant when the warrant is made known to him.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

ERWIN N. GRISWOLD,
Solicitor General.
HENRY E. PETERSEN,
Assistant Attorney General.
JEROME M. FEIT,
Assistant to the Solicitor General.
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

JANUARY 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972